

ORIGINAL

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DISTRICT COURT OF GUAM

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MARY L.M. MORAN
CLERK OF COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

10 05-00051

11 UNITED STATES OF AMERICA,) CRIMINAL CASE NO. _____
12 Plaintiff,)
13)
14 vs.) PLEA AGREEMENT
15 CHONG SUK HAN,)
16)
17 Defendant.)
18 _____

19 Pursuant to Rule 11(e)(1)(B), the United States and the defendant, CHONG SUK HAN,
20 enter into the following plea agreement:

21 1. The defendant agrees to waive indictment pursuant to Rule 7(b) of the Federal Rules
22 of Criminal Procedure, and enter a guilty plea to an Information charging her with possession
23 with intent to distribute less than five (5) grams of methamphetamine hydrochloride a/k/a "ice,"
24 in violation of 21 U.S.C. § 841(a)(1) and (b). The government will move to dismiss the
25 indictment against her in Criminal Case No. 03-00003 upon sentencing.

1 2. The defendant, CHONG SUK HAN, further agrees to fully and truthfully cooperate
2 with federal and local law enforcement agents concerning their investigation of the importation,
3 possession, and distribution of controlled substances, and related unlawful activities, including
4 the disposition of profits from and assets relating to such activities. She agrees to testify fully
5 and truthfully before any grand juries and at any trials or proceedings against any other co-
6 conspirators if called upon to do so for the United States, subject to prosecution for perjury for
7 not testifying truthfully. The United States will make this cooperation known to the Court prior
8 to the defendant's sentencing. The defendant further understands that she remains liable and
9 subject to prosecution for any non-violent Federal or Territorial offenses that she does not fully
10 advise the United States, or for any material omissions in this regard. In return for this
11 cooperation, the United States agrees not to prosecute defendant in the District of Guam or the
12 Northern Mariana Islands for any other non-violent offenses now known to the government or
13 which she reveals to federal authorities.

14 3. The defendant, CHONG SUK HAN, understands and agrees that any and all assets or
15 portions thereof acquired or obtained by her as a direct or indirect result of illegal trafficking in
16 drugs or used to facilitate such illegal activity shall be surrendered to the United States or any
17 lawful agency as may be directed by the Court. The assets to be surrendered include, but are not
18 limited to, cash, stocks, bonds, certificates of deposit, personal property and real property. In
19 particular, defendant agrees not to contest any administrative or court forfeitures of the \$3,875.29
20 in United States currency which law enforcement officers discovered in her residence on January
21 26, 2003, and represented drug proceeds of her drug trafficking.

22 4. The defendant, CHONG SUK HAN, further agrees to submit to a polygraph
23 examination by any qualified Federal polygraph examiner if called upon to do so by the
24 government. The defendant understands that such polygraph examinations may include, but will
25 not be limited to, her knowledge of or involvement in unlawful drug and related activities,
26 including money laundering, and her knowledge of others' involvement in such activities, and the
27 identification of any and all assets and conveyances acquired in whole or in part by the defendant

1 or others through such unlawful activities or the use of such assets or conveyances to further such
2 unlawful activities. Defendant understands that the government will rely on the polygraph in
3 assessing whether she has been fully truthful.

4 5. The defendant, CHONG SUK HAN, understands that the maximum sentence for
5 possession with intent to distribute less than five (5) grams of methamphetamine hydrochloride
6 a/k/a "ice" is incarceration for 30 years and a \$1,000,000 fine. Any sentence imposed shall
7 include a term of supervised release of at least three (3) years in addition to such terms of
8 imprisonment, as well as a \$100.00 special assessment fee. Defendant also understands a
9 sentence of supervised release could be revoked during the term of such supervised release,
10 thereby resulting in additional incarceration of defendant for up to two (2) years. The \$100
11 special assessment fee must be paid prior to or immediately upon sentencing. The government
12 will recommend a fine within the Sentencing Guidelines range. If defendant is financially unable
13 to immediately pay the fine in full, defendant agrees to make a full disclosure of her financial
14 status to the United States Attorney's Office by completing a Financial Disclosure Form (OBD-
15 500) for purpose of fixing a monthly payment schedule. Defendant understands that, by law,
16 interest accrues on any remaining balance of the debt. If defendant cooperates as set forth in
17 Paragraphs 2, 3, and 4, the government will recommend that defendant receive the minimum
18 term of incarceration legally available under the applicable statutes and Sentencing Guidelines.

19 6. If defendant provides full, truthful, and substantial assistance to investigating federal
20 agencies, the government will move the Court, as provided by Section 5K1.1, United States
21 Sentencing Guidelines, hereinafter USSG, and 18 U.S.C. Section 3553(e), for a downward
22 departure from the Guidelines and the statutory minimum sentence. Defendant understands the
23 following:

24 (a) At or before the time of sentencing, the United States will advise the Court of
25 any assistance provided by defendant in the prosecution of another person who
26 has committed a criminal offense. The United States may, but shall not be
27 required to, make a motion requesting the Court to depart from the sentencing
range called for by the guidelines in the event defendant provides "substantial
assistance." This decision shall be in the sole discretion of the United States
Attorney.

(b) It is understood and agreed that a motion for departure shall not be made, under any circumstances, unless defendant's cooperation is deemed "substantial" by the United States Attorney. The United States has made no promise, implied or otherwise, that defendant will be granted a "departure" for "substantial assistance." Further, no promise has been made that a motion will be made for departure even if defendant complies with the terms of this agreement in all respects, but has been unable to provide "substantial assistance."

(c) The United States agrees to consider the totality of the circumstances, including but not limited to the following factors, in determining whether, in the assessment of the U.S. Attorney, defendant has provided "substantial assistance" which would merit a government request for a downward departure from the applicable guideline sentencing range:

- (1) the United States' evaluation of the significance and usefulness of any assistance rendered by defendant;
- (2) the truthfulness, completeness, and reliability of any information or testimony provided by defendant;
- (3) the nature and extent of defendant's assistance;
- (4) any injuries suffered or any danger or risk of injury to defendant or defendant's family resulting from any assistance provided by defendant; and,
- (5) the timeliness of any assistance provided by defendant.

(d) It is understood that even if a motion for departure is made by the United States, based upon defendant's perceived "substantial assistance," the final decision as to how much, if any, reduction in sentence is warranted because of that assistance, rests solely with the District Court.

7. The defendant understands that to establish a violation of possession of less than five grams of methamphetamine hydrochloride a/k/a “ice” with intent to distribute, the government must prove each of the following elements beyond a reasonable doubt:

First: defendant knowingly possessed less than five (5) grams of methamphetamine hydrochloride a/k/a "ice"; and

Second: defendant possessed it with the intent to deliver it to another person.

8. The defendant understands that the United States Probation Office will calculate

8. The defendant understands that the United States Probation Office will calculate
“sentencing range” within the United States Sentencing Guidelines. The defendant understands
that the Sentencing Guidelines are advisory, but will be used by the District Court in fashioning the

1 sentence. The defendant also understands that the facts she stipulates to herein will be used by
2 probation, pursuant to § 1B1.2 of the Sentencing Guidelines, in calculating the advisory
3 guidelines level:

4 a. The defendant was born on 1957, and is a citizen of the United States.

5 b. If the defendant cooperates with the United States by providing information
6 concerning the unlawful activities of others, the government agrees that any self-incriminating
7 information so provided will not be used against defendant in assessing her punishment, and
8 therefore, pursuant to § 1B1.8 of the sentencing guidelines, such information should not be used
9 in determining the applicable guidelines range.

10 c. On January 26, 2003, during a lawful search of the defendant's residence, law
11 enforcement agents discovered less than five (5) grams of methamphetamine hydrochloride a/k/a
12 "ice." Agents found the following items in the kitchen: numerous ziploc packaging bags on a
13 spice rack on the kitchen counter; a Campbell's soup can with a false bottom that contained one
14 (1) ziploc bag with 2.6 grams, gross weight, of methamphetamine hydrochloride that was located
15 on a shelf inside a kitchen cabinet; underneath the lid of a can of apple pie filling was a ziploc
16 bag with 2.4 grams, gross weight, of methamphetamine hydrochloride that was located on
17 another shelf of said kitchen cabinet; a pink "Hello Kitty" plastic box with a fabricated glass pipe
18 and a ziploc bag with 0.5 grams gross weight of methamphetamine hydrochloride that was
19 located on another shelf of said cabinet; other drug paraphernalia including a beige scale and a
20 box of straws that were located on shelves of said kitchen cabinet. Agents also recovered a green
21 bottle with liquid which contained methamphetamine hydrochloride of approximately 19.0
22 grams, gross weight, that was found on the counter underneath said kitchen cabinet. From the
23 defendant's bedroom, agents recovered \$3,875.29 in U.S. currency that was found inside a Louis
24 Vuitton bag under the vanity. Defendant knowingly possessed the above-referenced
25 methamphetamine hydrochloride and intended to deliver them to other persons for profit. The
26 \$3,875.29 in U.S. currency found in defendant's bag was drug proceeds from her drug
27 trafficking.

1 d. Pursuant to USSG Section 1B1.3, the parties agree and stipulate that the total
2 amount of methamphetamine hydrochloride a/k/a "ice" attributable to the defendant as relevant
3 conduct which may be considered for sentencing purposes in this case is the net weight,
4 exclusive of packaging after laboratory analysis, of the above-referenced "ice" which law
5 enforcement officers discovered in her residence on January 26, 2003, and which defendant
6 intended to distribute to others for profit. After analysis of the drugs, a DEA forensic chemist
7 determined that the total net weight was 4.63 grams of actual methamphetamine hydrochloride.

8 e. The defendant understands that notwithstanding any agreement of the parties, the
9 United States Probation Office will make an independent application of the Sentencing
10 Guidelines. The defendant acknowledges that should there be discrepancies in the final
11 sentencing guidelines range projected by her counsel or any other person, such discrepancy is not
12 a basis to withdraw her guilty plea.

13 9. The defendant understands that this plea agreement depends on the fullness and
14 truthfulness of her cooperation. Therefore, defendant understands and agrees that if she should
15 fail to fulfill completely each and every one of her obligations under this plea agreement, or make
16 material omissions or intentional misstatements or engage in criminal conduct after the entry of
17 her plea agreement and before sentencing, the government will be free from its obligations under
18 the plea agreement. Thus, defendant, in addition to standing guilty of the matters to which she
19 has pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
20 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
21 authorities, whether Federal, State, or Local, shall be free to use against her, without limitation,
22 any and all information, in whatever form, that she has provided pursuant to this plea agreement
23 or otherwise; defendant shall not assert any claim under the United States Constitution, any
24 statute, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules
25 of Evidence, or any other provision of law, to attempt to bar such use of the information.

26 10. The defendant agrees to waive any right to appeal or to collaterally attack this
27 conviction. The defendant reserves the right to appeal the sentence actually imposed in this case.
28

1 11. The defendant understands and agrees that the government has bargained for a
2 criminal conviction arising from her criminal conduct. If at any time defendant's guilty plea or
3 conviction is rejected, withdrawn, vacated or reversed, for whatever reason, or is rendered invalid
4 for any reason, or if any change of law renders the conduct for which she was convicted to be
5 non-criminal, defendant agrees that she will enter a guilty plea to another charge encompassing
6 the same or similar conduct. In such event, defendant waives any objections, motions or
7 defenses based upon the Statute of Limitations, Speedy Trial Act, or constitutional restrictions as
8 to the time of bringing such charges.

9 12. The defendant acknowledges that she has been advised of her rights as set forth
10 below prior to entering into this plea agreement. Specifically, defendant has been fully advised
11 of, has had sufficient opportunity to reflect upon, and understands the following:

- 12 a. The nature and elements of the charge and the mandatory minimum penalty
13 provided by law, if any, and the maximum possible penalty provided by law;
- 14 b. Her right to be represented by an attorney;
- 15 c. Her right to plead not guilty and the right to be tried by a jury and at that trial, the
16 right to be represented by counsel, the right to confront and cross-examine witnesses against her,
17 and the right not to be compelled to incriminate herself, that is, the right not to testify;
- 18 d. That if she pleads guilty, there will not be a further trial of any kind on the charges
19 to which such plea is entered so that by entering into this plea agreement, she waives, that is,
20 gives up, the right to a trial;
- 21 e. That, upon entry of a plea of guilty, or thereafter, the Court may ask her questions
22 about the offenses to which she has pled, under oath, and that if she answers these questions
23 under oath, on the record, her answers may later be used against her in prosecution for perjury or
24 false statement if an answer is untrue;
- 25 f. That she agrees that the plea agreement is voluntary and not a result of any force,
26 threats or promises apart from this plea agreement;

1 g. That she has had this agreement translated for her into her native language, and she
2 fully understands it; and

3 h. The defendant is satisfied with the representation of her lawyer and feels that her
4 lawyer has done everything possible for her defense.

5
6 DATED: 6/15/05


7 CHONG SUK HAN
8 Defendant

9 DATED: 6/15/05


10 PETER C. PEREZ
11 Attorney for Defendant

12 DATED: 6/15/05

13 FREDERICK A. BLACK
14 United States Attorney
15 Districts of Guam and CNMI


16 By:

17 MARIVIC P. DAVID
18 Assistant U.S. Attorney

19 DATED: 6-15-05

20 RUSSELL C. STODDARD
21 First Assistant U.S. Attorney
